IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 901 OF 2007.
AND
SECOND APPEAL NO. 902 OF 2007

Pandurang Sambhaji Khartode. ... Appellant.
(In both appeals)

Versus.

Sadashiv Vithoba Khartode & others. ... Respondents.
(In both appeals)

Shri V.B.Rajure for the Appellant in both appeals.

CORAM : ABHAY S.OKA, J.

DATED : 27th November, 2007.

P.C.:

1. Heard Shri Rajure appearing for the Appellant. Second Appeal No.902 of 2007 arises out of a suit for injunction filed by the 1st to 3rd Respondents. Second Appeal No.902 of 2007 arises out of a suit for partition filed by the Appellant.

2. For the sake of convenience, reference is made to the parties as per their status in Regular Civil Suit No.16 of 1998 filed by Respondents Nos.1 to 3 in Second Appeal No.901 of 2007.

3. Vithoba, Pandurang, Dattu and Ganpat were the sons of Sambhaji. The 1st to 3rd Plaintiffs and 3rd to 8th Defendants are the legal representatives of Vithoba. The 1st Defendant (the Appellant in the Second Appeal)

is pandurang. The case of the Plaintiffs is that the suit properties are self acquired property of their father Vithoba and therefore, the 1st Defendant Pandurang who is the brother of Vithoba has no concern with the suit property. The case made out by the 1st Defendant in the written statement is that the suit property is not a self acquired property of Vithoba. It is the case of the 1st Defendant that in 1959, one brother Ganpat separated from the joint family and thereafter Vithoba, the 1st Defendant and 3rd brother Dattu were residing jointly. It is contended that the suit property was purchased in the year 1965-67 in the name of Vithoba during the lifetime of Sambhaji. It is stated that Sambhaji died in the year 1971. When the said property was purchased, Vithoba had no source of income.

4. The Courts below have accepted the case made out by the Plaintiffs regarding the acquisition of the property by their father Vithoba. The Courts below have disbelieved the case made out by the 1st Defendant that there was a partition in the year 1976 between the Plaintiffs and the 1st Defendant.

5. After consideration of oral and documentary evidence on record, the Courts below accepted the case made out by the Plaintiffs that in the year 1969 there

was a partition by metes and bounds. The Courts below accepted the case that certain ancestral properties were given to the share of Vithoba and from the income of the said properties, Vithoba purchased the suit property in his name and that is how the case of exclusive possession and ownership of the Plaintiffs and other legal representatives of Vithoba has been accepted both the Courts below.

6. I find that the Courts below have scanned the oral and documentary evidence on record and have recorded the findings of facts. It is not possible to interfere with the findings of facts in the Second Appeal. Therefore, the Courts below were justified in passing a decree for injunction in the suit filed by the Plaintiffs. Consequently the suit for partition by the 1st Defendant has been dismissed. There is no merit in the Second Appeals and the same are dismissed.

Judge.